

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GLADYS YOLTON, WILBUR
MONTGOMERY, ELSIE TEAS, ROBERT
BETKER, EDWARD MAYNARD, and
GARY HALSTEAD, on behalf of themselves
and a similarly situated class,

Plaintiffs,

Case No. 02-75164

v.

Honorable Patrick J. Duggan

EL PASO TENNESSEE PIPELINE CO., and
CASE CORPORATION, a/k/a CASE
POWER EQUIPMENT CORPORATION,

Defendants

**OPINION AND ORDER GRANTING MOTION OF CNH AMERICA LLC
(FORMERLY CASE LLC) TO CORRECT CAPTION**

At a session of said Court, held in the U.S.
District Courthouse, City of Detroit, County of
Wayne, State of Michigan, on_____.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

This matter currently is before the Court on a motion filed by CNH America LLC
(formerly Case LLC) to correct the case caption to reflect Case LLC's name change.
Plaintiffs oppose the pending motion, contending that the proper company to replace Case
LLC in the caption is CNH Global N.V. The Court held a hearing on the motion to
correct caption on April 20, 2005.

Plaintiffs originally filed suit against Defendant Case Corporation. On September 13, 2002, Case Corporation became a limited liability corporation and accordingly changed its name to Case LLC. According to CNH America LLC (“CNH America”), Case LLC changed its name to CNH America on January 1, 2004.

Plaintiffs argue, however, that CNH America has failed to inform the Court of a crucial event in Case Corporation’s history– a merger between it and New Holland N.V. on November 12, 1999. As a result of this merger, Plaintiffs believe that the Case LLC that changed its name to CNH America is not the same company as the Case Corporation originally sued. In other words, Plaintiffs contend that when Case Corporation and New Holland N.V. merged in November 1999, the surviving company– CNH Global N.V. (“CNH Global”)– assumed Case Corporation’s liabilities and therefore the liabilities Case LLC has been ordered to pay in this case.

Plaintiffs rely on the following information to support their position that Case Corporation is survived by CNH Global, rather than Case LLC and therefore CNH America. First, Plaintiffs present Case Corporation’s statements in press releases and CNH Global’s filings with the United States Securities and Exchange Commission (“SEC”) following the merger that “CNH Global N.V. combines the operations of New Holland N.V. and Case Corporation as a result of the business merger on November 12, 1999.” *See, e.g.*, Reply Ex. 2 at 3. Second, Plaintiffs point out that CNH Global’s senior management team is comprised of individuals who held similar positions at Case Corporation. Third, Plaintiffs note that CNH Global’s SEC filings list subsidiaries and

affiliates beginning with the name “Case” or “J.I. Case” and that half of these companies were subsidiaries of Case Corporation prior to the merger. Fourth, Plaintiffs present communications to or about employees and retirees of Case Corporation (or its predecessor, J.I. Case) designated as coming from CNH Global.¹ Fifth, Plaintiffs rely on the fact that CNH Global was the entity that entered into a Plant Shutdown Agreement with the UAW regarding a plant in East Moline, Illinois. As Plaintiffs point out, Case Corporation was the entity that entered into Collective Bargaining Agreements (“CBA”) with respect to the plant, including the CBA in effect when the shutdown agreement was executed.

The Court has carefully reviewed the evidence submitted and is persuaded that the motion should be granted. CNH America LLC has presented evidence which shows that the company with which Case Corporation merged was a wholly-owned subsidiary of New Holland N.V.—that being, Fiat Acquisition Corporation. *See, e.g.*, Reply Ex. 2 (CNH Global 1999 SEC Form 20-F) at 5 & 55. Thus New Holland N.V. did not directly merge with Case LLC; rather New Holland N.V. *acquired* Case LLC through its subsidiary’s merger. New Holland N.V. then changed its name to CNH Global to reflect its increased holdings. As CNH Global’s SEC filings provide:

On November 12, 1999 (“the merger date”), New Holland N.V. (“New Holland”) acquired Case Corporation (“Case”)

¹In other words, the communications were written on CNH Global letterhead, followed cover sheets with CNH Global’s name or logo, or were contained in e-mails by CNH Global employees.

by merging a wholly owned subsidiary of New Holland [Fiat Acquisition Corporation] *with and into* Case (“the merger”). As a result of the merger Case, as the surviving company, became a wholly owned subsidiary of New Holland. Effective with the closing of the merger, New Holland changed its name to CNH Global N.V.

See id. at 55 (emphasis added); *see also id.* at 49 & 50 (independent accountants statements regarding Case Corporation’s status as a wholly-owned subsidiary of CNH Global N.V.) Thus it was through the merger of Fiat Acquisition Corporation and Case Corporation that “CNH Global combine[d] the operations of New Holland N.V and Case Corporation”— that being the primary statement on which Plaintiffs rely to assert that *New Holland N.V. and Case merged* to become CNH Global. CNH America LLC asserts that Case Corporation’s “former” assets are listed as assets of CNH Global in the latter’s SEC filings because CNH Global is Case Corporation’s (now CNH America’s) parent company. CNH Global lists the assets of all of its subsidiaries in its SEC filings.

At this juncture, therefore, the Court concludes that the caption should be amended to replace Case Corporation with CNH America, LLC. If, after further discovery, Plaintiffs believe CNH Global N.V. is liable for the benefits at issue in this case due to the November 12, 1999 merger or for some other reason, obviously they may file the appropriate motion with the Court.

Accordingly,

IT IS ORDERED, that the Motion of CNH America LLC (formerly Case LLC) to correct caption is **GRANTED**.

PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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